Public Complaints about Forest Planning and Practice

1995-2001

FPB/SR/09
APRIL 2002

Letter of Introduction | Board's Role in Investigating Complaints | A Snapshot of Complaints 1995-2001 | What were Complaints About? | Investigation Results | Prominent Complaint Issues

Letter of Introduction

This special report has been prepared under section 189(3) of the Forest Practices Code, which permits the Chair of the Board to report to the Code ministers (Forests; Sustainable Resource Management; Water, Land and Air Protection; and Energy and Mines) and the public about issues arising from the Board's work in audits or complaint investigations. I would like to thank Board staff for their work in assembling this information and preparing this special report under my direction - in particular, Steve Chatwin, Darlene Dahl, Steve Hughes and Jacqueline Waldorf. Any errors or omissions are my responsibility.

In addition to audits and investigations of complaints, the Forest Practices Board Chair can undertake special reports to the public and four ministers (Forests; Energy and Mines; Water, Land and Air Protection; and Sustainable Resource Management) about matters relating to the Board's duties and important forestry issues related to the Code. Board members choose the scope and subject of the reports, which are often

In 1995, in response to the public's desire for legislation to ensure sound forest practices, the province created the Forest Practices Code and with it, the Forest Practices Board as an independent monitor of Code compliance and enforcement.

A key part of the Board's mandate is the investigation of complaints from the public about forest practices; it is in this capacity that the general public most often comes into contact with us. In our first six years as BC's independent forestry watchdog, we received 350 complaints and concerns - a number that has shown an increasing trend since the Board's inception.

We hear concerns, primarily from the public or public interest groups, that reflect the issues of the day in BC's forests. From the appropriateness of logging of forests damaged by beetles, to the protection of drinking water, the issues making the headlines become the complaints the Board investigates. We make recommendations for improvement on some of the

sparked by observations in the course of regular audits and investigations.

most topical issues in forest management.

In order to make our investigation process more relevant and responsive to the people involved, we are making changes to the way we handle the complaints we receive. We are always working to improve our response times and are using alternative dispute resolution methods to expedite certain cases and seek solutions. Our best result is if we can help to resolve a complaint to the satisfaction of all parties involved.

Each complaint the Board receives is unique - and complaints often touch on several aspects of the Code, so it is difficult to identify overall trends.

What does seem clear though, is that there is a high degree of interest in how our public forests are being used and managed. The management of public forests affects us all and the public is quick to voice concern over perceived unsound practices. In this province, forestry issues are also people issues.

Bill Cafferata

Chair, Forest Practices Board

The Board's Role in Investigating Complaints

The British Columbia legislature created the Forest Practices Board because it recognized the need for an independent agency to reflect the public interest in forestry matters by monitoring forest practices. The Board reports its findings and recommendations to the public and the four cabinet ministers who oversee the implementation of the Forest Practices Code: the Ministers of Forests; Water, Land and Air Protection; Sustainable Resource Management; and Energy and Mines.

The Board's mandate is set by the *Forest Practices Code of British Columbia Act*. The Act requires the Board to deal with complaints from the public that relate to:

- operational planning;
- forest practices;
- protection of forest resources; and
- compliance with and enforcement of the Code.

Individual citizens and public interest groups file the majority of complaints received by the Board; however, the Board also investigates complaints from agreement holders and government agencies.

Complaint investigations are one of the Board's key tools for monitoring forest practices and recommending improvements where appropriate. The Board assesses whether the plans and practices comply with the Forest Practices Code and, in the case of discretionary decisions and planning processes, whether decisions were appropriate in the circumstances. The Board's primary mission is to protect the public interest through encouraging sound forest practices. To this end it places a greater emphasis on achieving productive results than on identifying past faults and assigning blame.

For this reason, the Board provides an avenue for dealing with issues the public, government and licensees have been unable to resolve locally.

Many complaints begin with a call to the Board. Board staff attempt to resolve some of these calls by discussing the matter with the caller and, where appropriate, referring the caller to local ministry offices or to the licensees. For those with concerns not related to the Code, staff may provide other options, such as calling the Office of the Ombudsman.

The *Forest Practices Code of British Columbia Act*, section 177(2), sets out the standard the Board uses to determine whether to investigate a complaint. It states that the Board must deal with public complaints unless the Chair reaches the opinion that:

- the complainant knew about the issue for more than a year and had not filed a complaint during that time:
- another existing process may provide remedy to address the complaint;
- the complaint is frivolous, vexatious, not made in good faith, or concerns a trivial matter;
- further investigation is not necessary to consider the complaint; or
- in the circumstances, investigation would not benefit the complainant.

Whenever possible, the Board attempts to resolve complaints informally by bringing the involved parties together to talk through the issues.

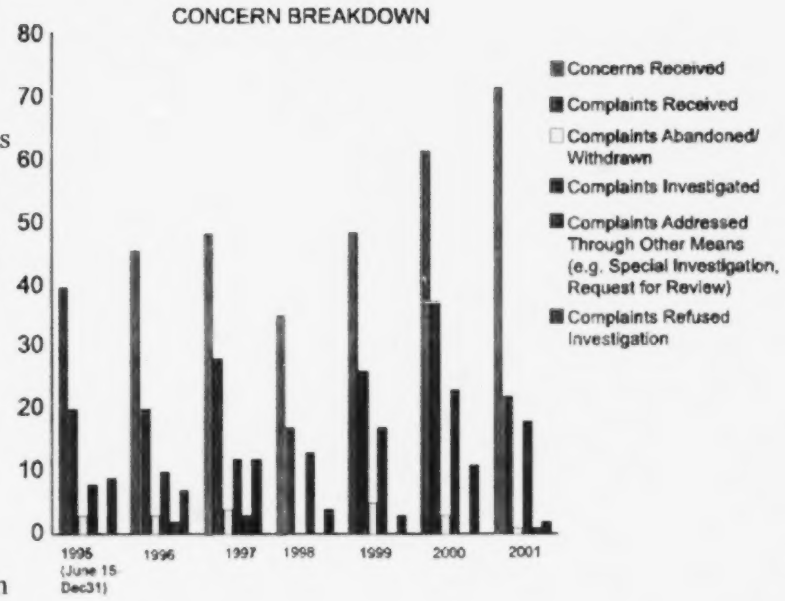
TOP ▲

A Snapshot of Complaints and Concerns, 1995-2001

1995 - The Board received 39 concerns in its first half-year, 20 of which were filed as written complaints. Three of the 20 complaints were abandoned or withdrawn, nine were refused based on section 177(2) of the Act, leaving eight investigated

complaints.

1996 - During 1996, the Board received 45 concerns, 20 of which were filed as complaints. Three complaints were abandoned, seven were refused and 10 were investigated. A majority of complaints revolved around issues relating to operational planning, with a lesser number expressing concern over forest practices. Two of the complaints were addressed through special investigations. Four investigation reports were released, none uncovering any substantial infractions of the Forest Practices Code.



1997 - 1997 saw the Board receive 28 complaints about forestry matters from the public, as well as fielding 20 additional calls looking for advice on a specific concern but where a formal complaint had not yet been filed. Four of the 28 complaints were resolved,

withdrawn or abandoned and 12 were refused investigation. Again, operational planning and forest practices were key areas of concern during the year and several complaints involved FDPs that did not take into consideration higher level plans or objectives. The Board investigated 12 complaints, including three through special investigations. Three investigations were completed during the year and a number of other complaints, though refused investigation, were resolved to the complainant's satisfaction through Board actions.

1998 - Of the 35 concerns from the public the Board received in 1998, 17 were filed as complaints. Four were refused and 13 complaints were investigated. Eight reports covering 10 investigations were released. The Board made recommendations to government to strengthen and clarify the Code with respect to protection of non-timber resources, and to improve the public review and comment process - issues present in a number of investigations.

1999 - Twenty-two of the 48 concerns received in 1999 were dealt with before they officially became complaints. Three complaints were found to be outside the Board's jurisdiction, five were abandoned or withdrawn - including two that were resolved locally, without an investigation, with assistance from Board staff. Communication was undoubtedly the biggest concern during the year. Poor communication about operational planning and poor communication amongst regulatory agencies caused public concern and this was reflected in the nature of the complaints received by the Board. Seventeen complaints were investigated and 12 reports were released. The Board made recommendations for communication improvements and recommended some Code decision-makers do a better job of documenting the reasons for their decisions.

2000 - In 2000, the Board received 61 calls of concern, 37 of which were filed as complaints. Eleven complaints were refused, three were abandoned or withdrawn and the Board investigated 23. Complaint themes for the year included planning, public review and comment, gaps in the Code regarding environmental protection, sound management during insect and disease epidemics and integrated and effective enforcement of the Code. Sixteen reports were completed and the Board continued to look for methods of resolution at the local level.

2001 - By the year's end, the Board had received 77 concerns and 24 complaints. Two were withdrawn, two were refused and one was converted to an appeal. The theme of adequate management and conservation of non-timber resources was present in a number of complaints, as was the appropriateness of government enforcement. The Board initiated 19 new investigations in 2001.

TOP ▲

What Were Complaints About?

Since 1995, 40 percent of complaints received by the Board have dealt with operational planning, meaning the way in which forest companies and government agencies developed and approved plans for harvesting. The next greatest number of complaints, at 17 percent, were about the public review and comment process.

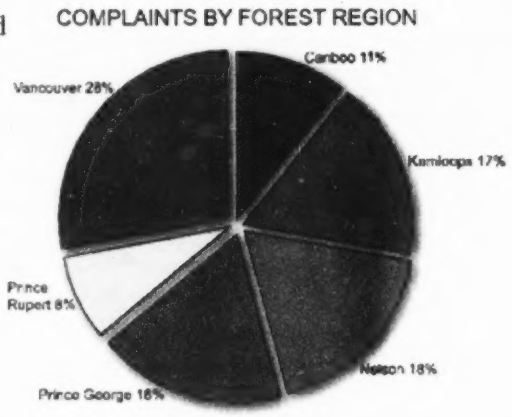
Fifteen percent of complaints were about the effects of forest practices, meaning what complainants actually saw on the ground or in the water as a result of an operation, and another 14 percent were about Code enforcement by government agencies. The remaining 14 percent concerned the consistency between the different types of plans, for example between forest development plans and regional land use plans.

Although these figures show the primary focus of the complaints, many complaints are complex and touch on a variety of related issues; for example, a complaint about forest development planning may also relate to protection of water as a forest resource and raise questions about Code enforcement.

Complaints come from every forest region and from a diverse range of people, including urban and rural dwellers, trappers, ranchers, lodge owners, woodlot owners, water users, and members of large organizations and small groups. The majority of complaints, at 29 percent, came from the Vancouver Forest Region while the fewest, at eight percent, came from the Prince Rupert Forest Region. This regional distribution more likely reflects differences in population and harvesting volumes than differences in forest practices.

Investigation Results

Ninety-five of the 170 complaints received by the Board have been or are being investigated. The remainder were outside the Board's jurisdiction, were not investigated under section 177(2) of the Act, or were abandoned or withdrawn by the complainants. Fifteen of the investigations started by the Board ended up being stopped or withdrawn because the issues were settled or significant progress was made as a result of Board intervention.



In 48 of the 80 completed investigations, the Board found that the parties against whom complaints were made (generally Ministry of Forests district managers or forest companies) had completely or

substantially complied with Code requirements. However, even where there was compliance with the Code, the Board frequently noted room for improvement in practices and procedures. In its investigation reports the Board has made 110 recommendations, most of which are directed at government. In many cases, local complaints have identified the need for policy or legislative changes at the provincial level.

Government has generally been responsive to Board recommendations when they have been specific to a forest district. For example, the Board made recommendations to government in one forest district on how to better notify the public of the opportunity to review forest development plans for the Small Business Forest Enterprise Program. The district manager has since implemented the Board's recommendations through improved newspaper notices advertising the opportunity for public review of upcoming plans.
While government has generally been responsive to recommendations that have applied to a specific district, this has not been the case when recommendations have applied to broad ministry policies and guidance. For example, the Board made nine recommendations to the Ministry of Forests in 1998 about the public review and comment process under the Code. The ministry rejected almost half of these recommendations.

TOP

Prominent Complaint Issues

Review and Comment on Forest Development Plans

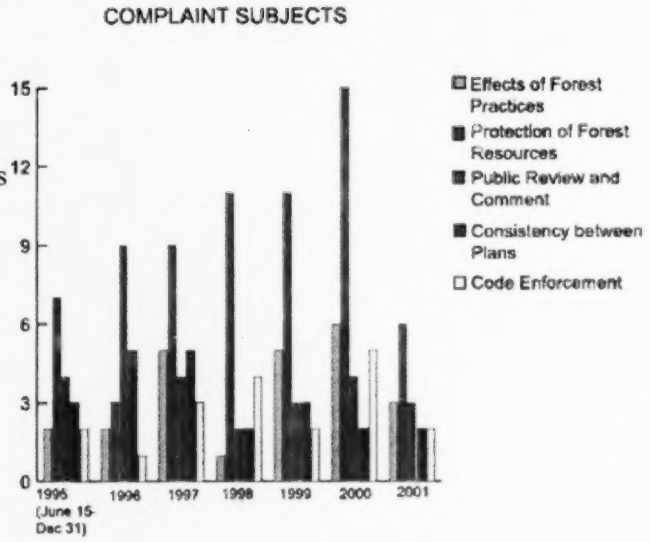
The opportunity for public review and comment on forest development plans provided in the *Operational Planning Regulation* is the only legislated avenue for public assessment of operational plans for proposed roads and cutblocks. It is therefore essential that licensees and district managers provide an adequate and meaningful opportunity for public review and comment.
Nearly one-third of the Board's complaint investigations involved concerns about public review and comment on operational plans.

Issues raised by complainants have included:

- adequacy of time allowed for review and comment on forest development plans;
- sufficiency of public notification about plan development and the opportunity for review and comment;
- adequacy of the materials (plans, maps) for public review;
- availability of technical information for public review; and
- adequacy of responses by licensees and the Ministry of Forests to public concerns about forest development plans.

Concerned that the public

review and comment process was not working well, and in response to the number of complaints about the process, the Board produced a special report on the state of forest development planning in the province. In gathering findings for the special report, the Board received many recommendations for improving the public review and comment process. *A Review of the Forest Development Planning Process in British Columbia* was released in December 2000 and provided recommendations for improving the planning framework and governments' organizational framework. The report provides useful suggestions for making the development planning process work better for the public, licensees and government.



Protection of Forest Resource Values

Comments by the public on operational plans often raise concern about protection of forest resources - especially values other than timber. Concerns that have arisen include protection of rare plant species, biodiversity, conservation of wetlands, conservation of old-growth forests, protection of riparian areas, flooding of agricultural land, the effect of road construction on streams and the effect of logging on scenic and recreational values.

In many cases, the Board has found that district managers and licensees have complied with the Code and have taken reasonable steps to minimize the impacts of forest practices on these resources. However, the Board is also finding that there are

no requirements to protect some forest resources because government has not fully implemented the Code. For example, the Code provides for protection of wildlife habitat and biodiversity, but only if other measures - such as designated wildlife habitat areas and landscape unit plans, are in place. Government has not completed implementation of these other measures and, until they are in place, certain forest resources do not legally have to be managed and protected from the effects of forest practices.

Managing for wildlife habitat was the subject of recent Board investigations.

In a complaint about the impact of a helicopter landing site, the Board investigated whether it was reasonable for the district manager to approve a road permit, considering the potential impact on wildlife habitat - specifically the mountain beaver. Although the Ministry of Environment, Lands and Parks (MELP, now the Ministry of Water, Land and Air Protection) expressed a general concern about the area being important wildlife habitat, the Ministry of Forests district manager approved clearing work for a road and helicopter landing area. The Board concluded that it was not reasonable for the district manager to be satisfied that the amendment would adequately conserve and manage wildlife habitat without first seeking clarification of MELP's comments. Among the Board's recommendations were improved communication between the ministries and that the ministries provide direction to staff on the designation of wildlife habitat features in the absence of formal policies.

Commenting on another complaint, that a proposed road near or over a river would reduce the wilderness experience and historical significance of a trail and damage the fisheries resource of the river, the Board recommended that the district manager, upon selecting the final road location, provide a rationale

for his decision to the Board and public. The rationale should revisit the requirements to adequately manage and conserve forest resources, and to locate roads outside of riparian management areas unless the exceptions in the *Forest Road Regulation* apply.

TOP

Consistency between Operational and Other Plans

The Board has received complaints that operational plans fail to take adequate account of potential conflicts with higher level plans for the same area. A special investigation, the *Implementation of the Cariboo-Chilcotin Land-Use Plan in Forest Development Plans*, sprang out of complaints that the Cariboo-Chilcotin Land-Use Plan (CCLUP, the province's first formally approved land-use plan) was not being properly implemented as required by the Forest Practices Code. Although the Board found that forest development plans were generally consistent with the higher level plan, they noted areas of interpretation and vagueness in the language and implementation of the CCLUP that made targets difficult to achieve. The Board made several recommendations to government, including identifying what specific parts of the CCLUP are the higher level plan and developing methods to inform the public about how the higher level is being implemented. These recommendations should assist in the implementation of the CCLUP, and in land use planning in other areas of the province.

Another complaint raised concerns about a silviculture prescription that was inconsistent with the objectives of a community development plan. The Board concluded that the silviculture prescription complied with Code requirements; however, they expressed concern about the level of local public distrust of forestry planning. The Board also noted that there appeared to be significant public confusion about the difference between land use planning and forestry planning, and about the role of local government in land use planning. Consequently, the Board recommended that the Ministry of Forests take proactive measures to inform local governments and interest groups in rural areas about plans likely to affect them, to promote public understanding of planning processes and to encourage community participation in operational planning.

In 1998, the Board received a complaint asserting a road was approved for construction within the riparian zone of a stream in Clayoquot Sound and that this was not consistent with the recommendations of the Clayoquot Sound Scientific Panel. The Board found that there was confusion about whether the road had to comply with the scientific panel recommendations. In the end, the Board found that the approval of road construction complied with the Code, but recommended that future forest development plans for the area should provide clear, unambiguous information and be specific about the extent to which Clayoquot Sound Scientific Panel recommendations apply.

Importance of Good Communication

The Board receives many complaints about operational plans
and the way they are presented to the public.

Many of the complaints the Board has received resulted from poor communication between the parties and individuals involved. While the Code sets out a basic framework for consultation among government, forest companies and the public, the success of that process depends on how well the parties communicate with each other. It is not surprising that ineffective communication means parties cannot resolve their issues themselves and that the Board may be consulted through the filing of a complaint.

In one complaint, the Board stressed the importance of effective communication between the government and the public regarding the general management of forest resources. Both have a responsibility to communicate and to attempt to resolve issues of concern. In another complaint, local water users were concerned about the fate of their watershed. They had requested community watershed status under the Code and complained to the Board that the Ministry of Forests had not responded to their request. The investigation found that communication between the complainants and government was not very good. Given the sensitivity of watershed issues in the area, the Board recommended that government make extra effort to ensure that applicants for community watershed status are kept well informed of the status of their applications. The district involved did contact the complainants, as recommended.

Communication is not limited to holding meetings and discussing issues, but also includes providing written reasons for decisions and timely responses to comments and letters. In a number of reports, the Board has made recommendations for providing the public with written reasons for potentially controversial decisions. In the last year or so, there has been a significant increase in the use of written reasons

for such decisions, which is a positive move consistent with open and accountable decision-making.

Discretionary Decisions Under the Code

In many situations, the Code gives district managers and other officials discretionary authority to make decisions that may have considerable impact on the environmental and social landscape. Not surprisingly, concerns about discretionary decisions arise in many complaints. The following are some examples of questions the Board has been asked to deal with:

- Did a district manager establish appropriate visual quality objectives for scenic areas in the absence of an approved higher level plan?
- Was it reasonable for a district manager to refuse to extend the period for public review and comment on complex forest development plans?
- Should a district manager have expected competing recreational user groups to reach a difficult consensus on permitted uses of a recreational area, instead of imposing a decision about whether or not snowmobile access should be restricted?
- Did a district manager provide adequate reasons for a decision to approve logging in a domestic watershed?
- Was it reasonable for a district manager to approve construction of a logging road in a riparian reserve zone established to protect a stream?
- Was it reasonable for a district manager to respond to the effects of planning delays by approving numerous and frequent amendments to forest development plans?
- Should the regional manager have designated a domestic water supply area as a community watershed?
- Did the district manager consider biodiversity values in approving a silvicultural prescription that included removal of young understorey trees?

Evaluating discretionary decisions is a challenging task for the Board. It is not the role of the Board to say whether a decision is "correct." The reason decisions are discretionary in the first place is that they rely on professional judgement in choosing among different options. Discretionary decision makers must, however, ensure that those affected by the decision have had access to fair process. There must be an absence of bias and there must be relevant reasons for the decision. They must also be able to demonstrate that the decision was appropriate under the circumstances and that the decision was not based on irrelevant criteria or insufficient information. These are the factors the Board considers in evaluating discretionary decisions.

In some cases, the decision-maker may be justified in not making a decision. The Board found this to be true in a case where the district manager called on recreational users to try to arrive at a decision themselves. This was a common-sense approach that suited the circumstances. The following are examples of Board recommendations regarding discretionary decisions and fair process:

- Decision-makers should provide written reasons when requested to do so, should respond in a timely manner, and should clearly address the concerns raised.

- Decision-makers should record and retain specific reasons for approvals of forest development plans and should publicly communicate decisions that generate significant public interest and involvement.
- Individuals who prepare and approve operational plans should document how they have considered and used substantial written public submissions in those plans.
- Decision-makers should be clear in the scope of their decisions, minimizing room for misinterpretation.

TOP

Trends Over Time

Each investigation by the Forest Practices Board is a brand new situation: no two have been identical. If there is a trend to be noted, it is that the nature of complaints received by the Board tends to mirror the issues of the day in forestry in British Columbia. For example, the mountain pine beetle epidemic has resulted in an increase in salvage logging and emergency logging to limit the spread of the beetle. As a result, there has been an increase in complaints about logging of forests damaged by beetles. Similarly, the Board has received more complaints relating to water resources and community watersheds as the public has shown greater concern about the impact of forest practices on water.

The Board has noted a trend toward greater public use of the Board's complaint investigation function. The number of incoming concerns continues to increase, indicating a greater awareness of the Board's function, and an increasing understanding of the Board's role in promoting sound forest practices. The Board has also continually improved its processes and performance to respond to the needs of the public.

For More Information on Investigations

The Board's *Complaint Investigation Reference Manual* offers detailed information about the investigation process, and is available on the Board's website or by contacting the Board directly.

The reports referenced in this document, and other information about the operation of the Board and its policies and activities, are also available on the Board's website or by contacting the Board directly.

How to Reach Us

If you wish to obtain further information about filing a complaint or about other Board activities, please contact us:
Toll-free phone 1-800-994-5899
Victoria phone (250) 387-7964
Fax (250) 387-7009
E-mail fpboard@gems9.gov.bc.ca

Website www.fpb.gov.bc.ca
Mail PO Box 9905, Stn Prov Govt, Victoria, BC, V8W 9R1

Frequently Asked Questions

Is the Board part of the Ministry of Forests?
No. The Board reports to government and to the public on the state of forest practices, but it is an independent agency and does not take direction from the Ministry of Forests or any other government ministry. The Ministry of Forests, the Ministry of Water, Land and Air Protection, the Ministry of Sustainable Resource Management or the Ministry of Energy and Mines, can be the subject of complaint investigations or audits by the Board.

What is the background of Board members?
Members of the Board have experience in a variety of fields, including the forest industry, labour, resource management, and environmental protection. This diversity is important in ensuring that Board members are familiar with a broad range of issues. It also helps ensure a balanced, objective approach in monitoring forest practices.

What is the background of the investigators?
The Board's investigators are all professional foresters or professional biologists.

What can the Board investigate?
The Board considers complaints from the public about forest planning, forest practices, forest protection and enforcement of the Forest Practices Code. The Board does not have the jurisdiction to investigate matters relating to private land (except private land in tree farm or woodlot licences), strategic land use planning, liability and legislation other than the Code.

Can the Board order forest companies or the government to take action?
No. The Board cannot stop work, require remediation or change laws or government policies. But the Board's experience has been that licensees and forest districts are often quick to embrace changes and improve practices as recommended by the Board.

What happens if the Board's recommendations are not followed?
If the Board is not satisfied with the response to its recommendations, it must report to the person who complained. It can also raise the matter with the ministers responsible for the Code or, further, make a report to Cabinet. The Board describes the responses to all its recommendations in its Annual Report to the legislature.

Does the Board always need a complaint before it can conduct an investigation?
No - the Board may generate and conduct special investigations to determine compliance with the Code and the appropriateness of government enforcement under Part 6 of the Act. Generally speaking, special investigations deal with matters of significant public interest that cannot be adequately addressed by a complaint

investigation or audit. The Board's conclusions and any recommendations are published in a report that goes to the four ministers and to the public.

TOP